



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/153810

PRELIMINARY RECITALS

Pursuant to a petition filed December 02, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 07, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$1,727 for the period of November 1, 2012 – October 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Jose Sylvestre
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In October, 2012, Petitioner provided the agency with her son's ([REDACTED]) Social Security number. The agency incorrectly entered the number in its system. As a result, [REDACTED]'s SSI of \$710/month

and the state supplement of \$83.78/month did not auto-populate into the system and the agency did not include the income in its calculation of the Petitioner's household income.

3. In November, 2012, Petitioner had W-2 benefits of \$358. From December, 2012 – May, 2013, Petitioner had earned income of \$993.30/month. From June, 2013 – October, 2013, Petitioner had earned income of \$1,002.18/month.
4. In November and December, 2012, Petitioner's minor child ■■■ had SSI of \$764/month. For January, 2013 – October, 2013, ■■■ had SSI of \$777/month. From November, 2012 – October, 2013, ■■■ had Kinship Care benefits of \$220/month.
5. From November, 2012 – October, 2013, ■■■ had SSI and a state supplement of \$793.78/month.
6. From January 1, 2013 - May 31, 2013, the Petitioner was in Transitional FS. The agency excluded these months from its overpayment calculations.
7. The gross income limit for a household of four is \$3,842. The net income limit is \$1,921.
8. On November 6, 2013, the agency issued a Notice of FS Overissuance to the Petitioner informing her that the agency intends to recover an overissuance of \$1,727 for the period of November 1, 2012 – October 31, 2013.
9. On December 2, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

In determining the amount of FS to be issued each month, the agency must budget all earned and unearned income of the FS household. 7 C.F.R. §273.9(b). This includes child support, Supplemental Security Income (SSI), SSDI, child support, Kinship Care and W-2 payments received by household members. FoodShare Wisconsin Handbook, Appendix section 4.3.1.

FS benefits are calculated pursuant to 7 C.F.R. § 273.9. The maximum FS allotment amounts, based on household size, are listed at FoodShare Wisconsin Handbook, Appendix 8.1. In general, a household must initially pass the so-called "gross income limit". The FS eligibility calculation process allows for certain deductions from gross income to arrive at a "net income" then tested against a "net income limit".

In this case, the agency concedes it erred in failing to correctly enter ■■■'s social security number in its system resulting in his SSI income being excluded in determining Petitioner's eligibility and allotment for FS benefits beginning November 1, 2012. The error was discovered by the agency in September, 2013. The overpayment period in this case is within 12 months of the discovery.

During the overpayment period, the Petitioner's household income varied with respect to W-2 benefits and earned income. The Petitioner did not dispute the agency's calculations of her income during the period of the overpayment. She testified that she does not feel she should be required to pay back any overissuance due to it being agency error. She testified, and the agency conceded, that she tried on

numerous occasions to have the agency correct the social security number. She also testified that she was told ■■■'s SSI would not be counted in her household income.

I recognize the Petitioner's frustration but the regulations require the agency to recover any overissuance regardless of who committed the error resulting in the overissuance. I reviewed the agency's calculations regarding the overissuance. The Petitioner passed the gross income limit test in each of the months involved in the overpayment period. However, the household income exceeded the net income limit of \$1,921 after applying the earned income deduction, standard deduction and shelter deduction in each month of the overpayment period. I reviewed the agency's calculations of the overpayment and conclude that the calculations are correct. I note that the overissuance worksheets are incorrect in indicating that the actual issuance of FS benefits in June, 2013 was \$136 and \$561 for July – October, 2013. The actual issuance, as confirmed by the agency's FS Issuance History and Cares Worker Web, was \$273/month for June – September, 2013 and \$276 for October, 2013. The worksheets do correctly indicate the amount of the overissuance and the overissuance total is correctly calculated.

Based on the evidence, the agency properly seeks to recover \$1,727 from the Petitioner for an overissuance of FS benefits for the period of November 1, 2012 – October 31, 2013.

CONCLUSIONS OF LAW

The agency properly seeks to recover \$1,727 from the Petitioner for an overissuance of FS benefits for the period of November 1, 2012 – October 31, 2013.

THEREFORE, it is

ORDERED

That the appeal of the petitioner is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

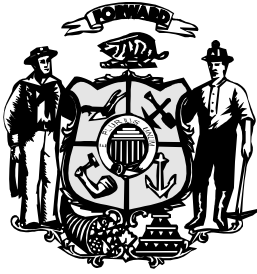
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson

Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 28th day of January, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 28, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability